



Attorney Docket # 5016-2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Yisroel LEFKOWITZ

Serial No.: 09/729,984

Filed: December 5, 2000

For: Method and Apparatus for Selling International
Travel Tickets in Combination with Duty Free
GoodsMail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**DECLARATION**

SIR:

The undersigned, Michael Barnard, hereby declares as follows:

1. I am currently a consultant working in the airline industry, and have been working in that capacity since June, 2000.
2. I make this statement in support of the patentability of the above-captioned application.
3. Prior to opening my consultancy practice, I worked in the airline industry for several years, including working as CFO for Discovery Airlines from February to June of 2000 and as an officer of Amtran, Inc., owner of ATA, Inc. (the ninth largest airline in the United States). I

worked for Amtran in varying capacities from 1981-1993, including as Vice-President and Treasurer beginning in 1988. My duties at the airlines have included reviewing new sources of revenues, including the use of duty-free sales to enhance airlines profitability.

4. I have reviewed claims 11 and 76 of the above-captioned application, United States Patent No. 5,732,398 ("Tagawa"), the publication entitled "Air France Corrects and Replaces Previous Announcement" dated January 23, 1996 ("Air France") and the publication entitled "Golden Boutique Set to Boost MAS Revenue" dated August 26, 1995 ("Golden Boutique").

5. Based on my experience, and in light of my knowledge of the field of duty-free shopping, I am of the opinion that the invention as claimed in the above-captioned application is not obvious in light of the Tagawa patent, alone or in combination with either or both of the Air France and Golden Boutique publications as those publications would be understood by one of ordinary skill in the art.

6. In my experience, one of ordinary skill in the art of duty-free shopping as of the date the above-captioned application was filed (*i.e.*, as of December 5, 2000) would be someone who has worked in the field of duty-free shopping for at least one year, and need not be someone with any degree or formal education in the field. Such a person would be familiar with the ways in which duty-free items are sold to ordinary consumers, typically international travelers.

7. In December, 2000, duty-free items were sold predominately through shops in airports, or other international points of embarkation and on airplanes. Sales of duty-free items could only lawfully take place where the purchaser was leaving the country in which the purchase was being made, with no opportunity to return from the airport to the country without first leaving the country.

8. In December, 2000, there was a long-felt need and desire in the industry to increase sales, as there is in any industry, but sales were limited by virtue of the legal restrictions on the sale of duty-free items only to those who were already planning on leaving the country. Many people tried to increase sales through various methods, such as advertising, promotion and other traditional sales techniques (e.g., "specials" and the like) but, to my knowledge, no one had thought to combine the sales of duty-free items with international travel tickets, so as to provide the means to purchase the duty-free item as is claimed in the above-captioned application. This combination of duty free purchase and international travel ticket has the benefit of increasing sales of not only the duty-free items, but also of otherwise unsold international airline tickets, which provided a benefit to the sellers of duty free items as well as the airlines, which was not contemplated by those of ordinary skill in the "duty-free selling" art in December, 2000.

9. I also note that airlines, which are the largest holders of otherwise unsold international travel tickets, have sold duty-free items on their planes for many decades. However, airlines never linked the sale of specific airline tickets to specific duty-free items to boost the sales of either product.

10. In my opinion, in December, 2000, it was considered very surprising in the industry to offer a combination of a specific international travel ticket and a specific duty-free item, and it was only in hindsight that those of ordinary skill in the industry recognized the benefits afforded by the combination presented by the invention as claimed in the above-captioned application.

11. In my capacity as an executive in the airline industry, I participated in many discussions about how to improve revenue for the airline, and some of these discussions included the use of duty-free sales to enhance revenues. These discussions invariably centered on ways in which the

airlines could use duty-free sales to improve revenues, but the combination of selling the airlines already available inventory of unsold seats in combination with duty-free sales was never contemplated or part of the discussions.

12. In my opinion, one of ordinary skill in the art would have had no motivation to combine the teachings of the Tagawa patent, the Air France publication and the Golden Boutique publication, since there is nothing in those references which even remotely touches on the benefits of the combination claimed in the above-captioned application, and, even if one of ordinary skill in the art would have attempted to combine the teachings of those references, the resulting combination would not have resulted in the inventions as actually claimed in the above-captioned application.

13. Tagawa simply teaches an electronic kiosk for providing access to multiple vendors through a single location, but does not teach the linking of the sales of duty-free items and international travel tickets to one another.

14. The Air France publication does not teach the linking, and neither does the Golden Boutique publication.

15. In sum, nowhere in the art is it shown to link the sale of a specific international travel ticket with a specific duty-free item at a cost lower than that of at least one of the two items sold alone, to increase sales of either or both items as claimed in the above-captioned application. This was a remarkable and surprising combination that was unknown in the industry prior to December 5, 2000.

16. I make this statement freely and without compensation. I also have no interest in the above-captioned application, in any patent which may issue thereon and/or in any business which may benefit from the grant of a patent on the above-captioned application.

17. In the past, but not since approximately June, 2004, I have worked for the assignee of the above-captioned patent, International Travel Retailing, Inc., as a consultant. My execution of this declaration, however, is offered without the promise of future work, or for any other financial benefit, direct or indirect, present or future, to me and/or to any entity in which I have an interest.

18. The statements made herein are true to my own knowledge, except for those statements made upon information and belief, which statements are believed to be true based upon my reasonable investigation into the matter stated.

19. I understand that false statements and the like so made are punishable as perjury under the laws of the United States, and that making any false statement herein may jeopardize the validity of any patent which may issue based upon the instant application.

Respectfully submitted,

By Michael Bernard

Dated: February 10, 2006